In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 182

GUILIO BRUNI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 359 F. 2d 802.

JURISDICTION

The judgment of the court of appeals was entered on March 18, 1966. A petition for rehearing was denied on April 27, 1966. The petition for a writ of certiorari was filed on May 28, 1966, one day out of

time. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction.

2. Whether the court erred in admitting certain exhibits in evidence.

3. Whether the court erred in its instructions to the jury.

STATEMENT

Petitioner was convicted in a jury trial in the United States District Court for the Eastern District of Wisconsin on Counts II and III of an indictment charging the passing and uttering of $20 counterfeit bills in violation of 18 U.S.C. 472 (App. 3, 9-11).[1] Petitioner was given concurrent sentences of imprisonment for five years and was ordered to pay a total fine of $10,000 (App. 4). On appeal (App. 16-17) the conviction was affirmed.

The evidence showed that on September 11, 1964, petitioner purchased counterfeit $20 bills in the amount of approximately $5,000 to $7,000 (App. 138-142, 171-173). On the evening of September 12 petitioner sprayed both his and co-defendant Johnson's hands to avoid leaving fingerprints on the bills. The

[1] "App." refers to the Defendant-Appellant's Appendix. The conspiracy charge in Count I was dismissed prior to trial. Co-defendant Johnson pleaded guilty to the substantive Counts IV, V, and VI and testified as a government witness (App. 2, 6-9, 11-14, 136-137).

two men then drove from Northlake, Illinois, to the Wisconsin Dells for the purpose of passing the bills (App. 148-149). On the following day both petitioner and Johnson passed bills by making a number of small purchases at taverns and filling stations (App. 151-156, 201-207). One time after Johnson bought gas with a counterfeit bill, petitioner noticed that the attendants were suspicious and told Johnson to switch the bills. Johnson retrieved the $20 counterfeit bill and replaced it with a genuine one (App. 75-77, 94-96, 159-160). The attendant wrote down Illinois license LB7564, petitioner's number (Gov. Ex. 16) (App. 78, 79).

Count III was based on the passing of a bill to one Monthie at a tavern in Astico, Wisconsin (App. 19, 21-22). Monthie testified that he was positive that petitioner was the man who had passed the bill. He had identified petitioner's photograph from a group shown him (App. 25-26).

Count II was based on a bill for two cans of beer in Lowell, Wisconsin (App. 38-39, 49). Both Mrs. Rahn and her husband were positive in their identification of petitioner (App. 39, 42-44, 49, 57). This bill (Gov. Ex. 13), which was the only $20 bill taken in at the bar on that day, was turned over to a police officer by Mr. Rahn (App. 39A, 50).

A few days after the Wisconsin trip, petitioner told Johnson that one of the boys who had been making money for him had been caught. He instructed Johnson to burn some of the counterfeit money, and Johnson did so (App. 162-163, 168). On September 23, 1964, when Johnson was arrested, agents found in a

dresser three $20 counterfeit bills which had been given to Johnson by petitioner (Gov. Ex. 24, 25, 26), along with a printing press, inks and paper (App. 162-164, 217-218).

On September 24, 1964, Secret Service agents arrested petitioner at his house for passing counterfeit notes. When the agents asked petitioner whether he had any counterfeit notes, he invited them to look around since he had nothing to hide (App. 113-114, 122). The agents found two untrimmed counterfeit $20 bills, which fell out when the door of a desk-like cabinet was opened (App. 114-115, 123). At two interviews with a Secret Service agent, petitioner denied that he had been in Wisconsin on the weekend of September 13, 1964, and stated that he had not been there for two or three years (App. 213, 216-217).

Expert testimony disclosed that the $20 bills used to buy beer at taverns in Wisconsin (Gov. Ex. 23, 1, 13), the three $20 bills recovered from Johnson's home (Gov. Ex. 24, 25, 26), and the two untrimmed $20 bills found in petitioner's home (Gov. Ex. 21 and 22) were all counterfeits produced from the same set of plates (App. 235-246A).

ARGUMENT

1. The evidence, as summarized in the Statement, *supra*, was clearly sufficient to support the conviction.

2. There is no substance to petitioner's argument that certain exhibits were inadmissible in evidence.

(*a*) Petitioner had a direct connection with Gov. Exhibits 21 through 26. Exhibits 21 and 22 were untrimmed counterfeit $20 bills found in the search of petitioner's home. Exhibit 23 was a counterfeit $20 bill passed by petitioner in a purchase of September 13, 1964 (not charged as a substantive count). Exhibits 24 through 26 were three counterfeit $20 bills given by petitioner to Johnson and recovered in the search of Johnson's home. These exhibits were admissible as evidence of similar offenses, acts or conduct to show petitioner's knowledge and intent. *Williams* v. *United States*, 272 F. 2d 40, 41-42 (C.A. 8); *United States* v. *Iacullo*, 226 F. 2d 788, 793 (C.A. 7), certiorari denied, 350 U.S. 966; *Kowalchuk* v. *United States*, 176 F. 2d 873, 877-878 (C.A. 6).

(*b*) Nine photographs (Gov. Ex. 4-12), including one of petitioner (App. 83, Gov. Ex. 11), one of Johnson, one of a Secret Service agent, and the others of persons suspected of handling counterfeit money (App. 246A-247) were produced and marked as exhibits only after petitioner had requested the court to order the government to produce them (App. 45-46). Thereafter, petitioner's counsel used the photographs on cross-examination of government witnesses to challenge the credibility of their identifications (App. 54-56, 83, 203-205). It was only after this that the government called the investigative agent as a witness and introduced the photographs in evidence, so that the jury could determine the issue raised by petitioner as to the credibility of the identifications (App. 246A-248, 255-256). In these circumstances, petitioner

cannot complain of the court's ruling admitting the photographs.

3. During the testimony of agent Sokoll, the court overruled a defense objection to the question whether he had an opinion as to whether Gov. Exhibits 21 through 26 were genuine or counterfeit. The following colloquy then occurred:

> THE COURT: The jury have been instructed once, and I will instruct you again that the defendant is on trial accused of passing and uttering two counterfeit obligations only, one at Lowell, Dodge County, and the other at Astico, Dodge County. If he passed or had anything to do with passing counterfeit obligations elsewhere, it has nothing to do whatever with this case. That evidence was received only on the question of his knowledge or intent, only on that question (G. App. 301).[2]

Petitioner's counsel complained that the court's instruction was prejudicial and moved for a mistrial, which was denied (Pet. 8). Shortly thereafter, the court stated (G. App. 301):

> Members of the jury, it just occurred to me that a while ago I did not give you a complete instruction when I was talking about incidents other than the alleged incidents at Lowell and Astico. If, and only if, the Government has convinced you beyond a reasonable doubt that the defendant passed counterfeit securities at either of the two places charged in this indictment; and only if you are convinced that he did so, then

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[2] "G. App." refers to the Government's Appendix.

> you can consider that evidence only on the question of intent to defraud and on the question of whether he had knowledge they were counterfeit. That evidence has no place in consideration of the question as to whether he attempted to pass or did pass counterfeit securities in these two places named in the indictment.

The argument that the initial statement was so erroneous that it could not be corrected is, we submit, without merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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